



**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 697**

**[Docket No. 211101-0222]**

**RTID 0648-XC572**

**Fisheries of the Atlantic; Atlantic Migratory Group**

**Cobia; 2022 Commercial Closure for Atlantic Migratory  
Group Cobia**

**AGENCY:** National Marine Fisheries Service (NMFS),  
National Oceanic and Atmospheric Administration (NOAA),  
Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements a closure in Federal waters off Georgia through New York for Atlantic migratory group cobia (Atlantic cobia) that are harvested and sold (commercial). Commercial landings of Atlantic cobia are projected to reach the commercial quota on December 16, 2022. Therefore, NMFS closes the commercial sector for Atlantic cobia in Federal waters from December 16, 2022, until the start of the next fishing year on January 1, 2023. This closure is necessary to protect the Atlantic cobia resource.

**DATES:** This temporary rule is effective at 12:01 a.m. eastern time on December 16, 2022, until 12:01 a.m.

eastern time on January 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Frank Helies, NMFS  
Southeast Regional Office, telephone: 727-824-5305,  
email: *frank.helies@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The fishery for Atlantic cobia in Federal waters is managed under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) by regulations at 50 CFR part 697.

Separate migratory groups of cobia are managed in the Gulf of Mexico and Atlantic. Atlantic cobia is managed from Georgia through New York (50 CFR 697.2(a)). The southern boundary for Atlantic cobia is a line that extends due east of the Florida and Georgia state border at 30°42'45.6" N latitude. The northern boundary for Atlantic cobia is the jurisdictional boundary between the Mid-Atlantic and New England Fishery Management Councils, as specified in 50 CFR 600.105(a). The fishing year for Atlantic cobia is January 1 through December 31 (50 CFR 697.28(a)).

Amendment 31 to the Fishery Management Plan (FMP) for Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region and the implementing final rule removed Atlantic cobia from Federal management under the Magnuson-Stevens Fishery Conservation and Management Act, while also implementing comparable regulations in

Federal waters under the Atlantic Coastal Act (84 FR 4733, February 19, 2019).

The Atlantic States Marine Fisheries Commission (ASMFC) approved Amendment 1 to the Interstate FMP for Atlantic Cobia in 2019 and Addendum 1 to Amendment 1 in 2020. Amendment 1 and Addendum 1 provided for an increase in the commercial quota and transferred quota monitoring responsibility to the ASMFC. NMFS subsequently issued comparable regulations for Amendment 1 and Addendum 1 on November 8, 2021 (86 FR 61714, November 8, 2021). That final rule increased the commercial quota to 73,116 lb (33,165 kg) and transferred quota monitoring responsibility from NMFS to the ASMFC (50 CFR 697.28(f)(1)). Additionally as described in that final rule, during the fishing year, if the ASMFC estimates that the sum of commercial landings (cobia that are sold), reaches or is projected to reach the commercial quota, then the ASMFC will notify NMFS of the need for a commercial closure of Atlantic Federal waters for Atlantic cobia (50 CFR 697.28(f)(1)).

Atlantic cobia are unique among federally managed species in the U.S. southeast region, because no commercial permit is required to harvest and sell them, and so the distinction between the commercial and recreational sectors is not as clear as with other

federally managed species. However, for purposes of this temporary rule, Atlantic cobia that are harvested and sold are considered commercially caught, and those that are harvested and not sold are considered recreationally caught.

On November 16, 2022, the ASMFC notified NMFS that commercial landings information indicates that the commercial quota is estimated to be met by December 16, 2022. Accordingly, the ASMFC requested that NMFS close commercial harvest of Atlantic cobia in Atlantic Federal waters on December 16, 2022, to prevent the commercial quota from being exceeded.

Regulations for the commercial sector of Atlantic cobia at 50 CFR 697.28(f)(1) require that NMFS file a notification with the Office of the Federal Register to prohibit the harvest, sale, trade, barter, or purchase of Atlantic cobia for the remainder of the fishing year when commercial landings reach or are projected to reach the commercial quota specified in 50 CFR 697.28(f)(1). Accordingly, the commercial sector for Atlantic cobia is closed in Federal waters beginning on December 16, 2022, and will remain closed until the start of the next fishing year on January 1, 2023.

The recreational bag and possession limits for Atlantic cobia apply while the recreational sector is

open (50 CFR 697.28(e)). The prohibition on sale and purchase does not apply to Atlantic cobia that were harvested, landed ashore, and sold before December 16, 2022, and were held in cold storage by a dealer or processor.

### **Classification**

NMFS issues this action pursuant to the Atlantic Coastal Act. This action is required by 50 CFR 697.28(f)(1) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations associated with the commercial quota and closure provisions for Atlantic cobia have already been subject to notice and comment, and all that remains is to notify the public of the commercial closure for the remainder of the 2022 fishing year. Prior notice and opportunity for public comment on this action is contrary to the public interest because of the need to immediately implement the commercial closure to protect

Atlantic cobia, since the capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public comment would require time and would likely result in a harvest that exceeds the commercial quota.

For the aforementioned reasons, there is good cause under 5 U.S.C. 553(d) (3) to waive the 30-day delay in the effective date of this action.

**Authority:** 16 U.S.C. 5101 *et seq.*

Dated: December 5, 2022.

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Jennifer M. Wallace,  
Acting Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.